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BY FIRST CLASS & ELECTRONIC MAIL (northeastplanning@fws.gov)
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Subj: Comments on Monomoy National Wildlife Refuge, Chatham, MA; Draft Comprehensive Conservation Plan and Environmental Impact Statement (FWS–R5–R–2013–N265; BAC–4311–K9).

Dear Ms. Herland:

We appreciate the opportunity to comment on two issues of great importance to the Commonwealth of Massachusetts that are raised by the U.S. Fish and Wildlife Service's (FWS) Draft Comprehensive Conservation Plan and Environmental Impact Statement for the Monomy National Wildlife Refuge (CCP/EIS): (1) the FWS's assertion that the 1944 Judgment on the Declaration of Taking (Judgment) effected the taking of the Commonwealth's submerged lands; and (2) the FWS's assertion that the 1944 Judgment eliminated the Commonwealth's and the public's rights arising from the public trust doctrine and the Colonial Ordinances of 1641-47. As detailed below, both of the FWS's assertions are legally flawed and we urge the FWS to amend its position in the Final CCP/EIS so that it is consistent with the facts and law at issue here.

The 1944 Judgment on the Declaration of Taking Did Not Give the United States Title to Submerged Lands

The CCP/EIS describes the western boundary of the Monomoy National Wildlife Refuge (Refuge) as extending to, and being fixed by, the line depicted on a map appended to the 1944 Judgment and including "upland, intertidal flats, and submerged lands and waters." CCP/EIS at 1-1, 1-2 (Map 1.1), 1-27, 2-100. In turn, the CCP/EIS describes the eastern boundary of the Refuge as those areas above "the mean low water line" as that line may meander due to the natural coastal processes of accretion and reliction. *Id.* While the Commonwealth does not take

issue here with the FWS's description of the Refuge's eastern boundary,[1] the Commonwealth does take issue with the FWS's description of the western boundary since that description is inconsistent with the 1944 Judgment and prior litigation that has touched on the issue.

The 1944 Judgment describes unambiguously the lands the United States was taking as "[a]ll those tracts and parcels of land *lying above mean low water*." Exhibit (Ex.) 1, at Schedule A (emphasis added). The Judgment then goes on to describe the lands encompassed within the scope of that declaration as "including a portion of Morris Island; all of Monomoy Beach, Monomoy Island, and Monomoy Point; Sheeters Island; together with all land covered by the waters of land locked ponds; and all islands, islets, sand bars and tidal flats lying in Nantucket Sound, Chatham Bay, and Stage Harbor." *Id.* Consistent with the Judgment's defined "lying above mean low water" limit, the description of the lands included within the taking does not explicitly or implicitly refer to any submerged lands lying below (seaward of) the mean low water mark, *see id.*, and the Judgment's reference to "all land covered by waters of land locked ponds" and "tidal flats lying in Nantucket Sound" reinforces that omission. In particular, the "all land covered by waters of land locked ponds" language, which lands would sit within the bounds of the "above mean low water" boundary, demonstrates that where the drafter (the United States) wanted to include submerged lands it said so expressly.[2] The "tidal flats" language expresses a similar intent, as the terms "tidal flats" and "flats" are terms of art, which both refer to "the area between mean high water and mean low water." *Arno v. Commonwealth*, 457 Mass. 434, 436 (2010) (citation omitted). Thus, according to its plain and unambiguous terms, the 1944 Judgment effected the taking of only those lands "lying above mean low water." Ex. 1, at Sched. A.[3]

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[1] Instead, the Commonwealth adopts the position the Town Chatham sets forth in its comments on the CCP/EIS regarding the FWS's assertion that it now holds title to 717 acres of land known as South Beach, including the Town's argument that the *Siesta Properties, Inc. v. Hart*, 122 So.2d. 218, 221 (Fla. Dist. Ct. App. 1960) rule applies to resolve that issue.

[2] The United States likely deemed the "all land covered by waters of land locked ponds" language necessary because if any of those ponds were of a sufficient size to make them Great Ponds, the Commonwealth would have held title to them, including the submerged lands under them. *See Attorney General v. Jamaica Pond Aqueduct Corp.*, 133 Mass. 361, 364 (1882) ("The great ponds of the Commonwealth belong to the public, and, like the tide waters and navigable streams, are under the control and care of the Commonwealth").

[3] While the interpretation of the 1944 Declaration of Taking and Judgment are determined by federal law, it is well settled that "where there is 'no clear federal law to apply, federal courts have referred to state law to provide the appropriate rule'" as long as the State law rule is not hostile to the federal interests. *Near v. Dep't of Energy*, 259 F. Supp. 2d 1055, 1059 (E.D. Cal. 2003). Here, the sparse body of federal case law is consistent with Massachusetts law. *Compare United States v. Pinson*, 331 F.2d 759, 760-61 (5th Cir. 1964) (court must consider the "intention of the United States as author of the declaration, to be gathered from the language of the entire declaration and the circumstances surrounding it"), *with General Hospital Corp. v. Mass. Bay Transp. Auth.*, 423 Mass. 759, 764 (1996) (court "must consider the language of the taking order and the circumstances surrounding the taking."). Where the language in a declaration of taking is unambiguous, it is dispositive. *See Sheftel v. Lebel*, 44 Mass. App. Ct. 175, 179 (1998); *see*

In asserting that the Refuge's western boundary extends beyond the land taken by the Judgment's unambiguous language, the FWS relies on the Judgment's subsequent language describing the "exterior limits" of the taking by reference to longitudinal and latitudinal coordinates and the map appended to the Judgment, *see* CCP/EIS at 2-100; *see also* Ex. 1, at Sched. A & Map, but the later description and map cannot bear the weight that FWS places on them. To the contrary, those coordinates, as the Judgment makes clear, define only the "*exterior limits* of the taking," not the actual land taken (which is defined by the language that precedes those coordinates), and thus do not bring within the land taken by the Judgment any lands *below* the mean low water line (i.e., submerged lands). *See* Ex. 1, at Sched. A. In other words, the condemned land fell within those boundaries but was not defined by them.[4] The map appended to Schedule A supports this reading—again, the only one consistent with the Judgment's text—since the map's key defines the rectangular box delineated by the coordinates in Schedule A as the "*Limits of* Area to be Taken," not the "*Area* to be Taken." *Id.* at Sched. A–Map (emphasis added). Consistent with this fact, the Secretary of the Department of Interior then wrote that the "above-described area (i.e., the land being taken) contains in the aggregate 3,000 acres, more or less," Ex. 2, at 2, and the FWS has acknowledged that this area "roughly corresponded with the area above mean high water" in 1944. CCP/EIS at 2-100.[5] While the FWS seeks to elide this fact by dismissing the Secretary's 3,000 acre description as "not accurate[]," since the agency's 2014 interpretation of the land that was taken in 1944 indicates that the area "significantly exceeded that [3,000 acre] amount," *see* CCP/EIS at 2-100, the Secretary's 1944 description is the only one that is consistent with the Declaration's "land above mean low water" text. Ex. 2, at 2 (Declaration of Taking).[6]

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also Panikowski v. Giroux, 272 Mass. 580, 583 (1930) ("When the description in a deed or devise is clear and explicit, and without ambiguity, there is no room for construction, or for the admission of parol evidence, to prove that the parties intended something different."). To the extent there were some ambiguity in the text—and there is none, that ambiguity would be construed against the United States (as the drafter) and in favor of the Commonwealth. 9 NICHOLS ON EMINENT DOMAIN § G.33.04[2] (3d ed. 2014).

[4] As discussed below, at the time of the taking, the Commonwealth held title to the submerged lands in the bay off of Monomoy's western shore, and thus the only way the United States could have acquired those lands is if in 1944 it had condemned not just the lands "*above* mean low water" but also lands "*below* mean low water" or "submerged lands" within the coordinate-based limit. *Infra* pp.5-6.

[5] The fact that the acreage the Secretary described in the Declaration corresponds with the area above mean high water instead of the area above mean low water (i.e., the limit of the land being taken) is consistent with the accepted government surveying practice for coastal areas, which is known as a "meander survey" and "survey[s] the approximate location of the mean high water mark." 9 NICHOLS ON EMINENT DOMAIN, *supra* note 3, at § G.33.03[3][b]; *see also* GENERAL LAND OFFICE, DEP'T OF INTERIOR, MANUAL OF INSTRUCTIONS FOR THE SURVEY OF THE PUBLIC LANDS OF THE UNITED STATES § 226, at 216 & § 233, at 221-22 (1931).

[6] In fact, under the FWS's modern interpretation, the land taken in 1944 may have been more than *double* the 3,000 acres the Secretary described in the 1944 Declaration of Taking as the "area" "described" by the text. CCP/EIS at 2-100 (stating that in 2000 the sum of the land above

The exterior limits defined by the coordinates and the map, while not defining the extent of the lands taken in 1944, are still relevant to the United States' ability to acquire or lose land after 1944 in accordance with the common law doctrines of accretion and reliction. As to the eastern boundary, the coordinates and the map define the limit of the taking as the mean low water line on the Atlantic Ocean. Ex. 1, at Sched. A. Accordingly, and as FWS asserts, this boundary is ambulatory. In other words, it gives the United States, like any other littoral owner, the benefit of any lands that, through the process of accretion, both extend seaward of the mean low water line in 1944 (i.e., into the Atlantic Ocean) and lie above the mean low water line. *See White v. Hartigan*, 464 Mass. 400, 407 (2013); *see also* Ex. 1, at Sched. A (stating that the United States was taking "fee simple title to said lands together with all accretion and reliction").[7] The same is not true as to the *potential* limit of the western boundary, which is defined, not by the mean low water line, but rather by a straight line located in Nantucket Sound that runs northeasterly towards a second landward coordinate. Ex. 1, at Sched. A & Map. Thus, on the Refuge's western side, the line established by the coordinates fixes the *limit* within which the United States acquired (1) any *then* existing lands lying above the mean low water line and (2) any *post* 1944 accreted lands lying above the mean low water line.

The Judgment's different treatment of the eastern and western boundaries was likely the result of several factors. First, unlike the waters off of the Refuge's Atlantic Ocean shore, the waters off of the Refuge's Nantucket Sound shore included "islands, islets, sand bars" lying above mean low water that would have been valuable to the purposes of the taking—the protection of migratory birds—but would also have been very difficult, due to their constantly shifting nature, to delineate precisely with coordinates. *See* Ex. 1, at Sched. A.[8] Second, due to tidal and wave action from the Atlantic Ocean, Monomoy was shifting, and continues to shift, westward. Today, for example, overwash and other littoral processes have caused the tidal flats on Monomoy's western side (i.e., the area identified as Common Flats on the 1938 plan) to migrate past the western coordinate-based fixed exterior limit. CCP/EIS at 1-2 (Map 1-1); *see also id.* at 2-100 (acknowledging "geophysical processes" on Monomoy's western side), 2-103 (noting loss of land on Monomoy's southeastern shoreline). Because of this western movement and the common law rules that apply to littoral property, the United States appears to have sought to mitigate the risk that it would lose entirely and too quickly the Refuge to these natural forces by establishing a fixed potential western limit on the Refuge beyond the then existing

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the mean low water line and the submerged lands within the rectangular coordinates was 7,604 acres); Ex. 2, at 2 (Decl. of Taking). The notion that this difference was a mistake or inaccuracy is simply implausible. Indeed, if the FWS were correct, it could render the original condemnation void. 9 NICHOLS ON EMINENT DOMAIN, *supra* note 3, at § G.33.02[2].

[7] Similarly, and as the 1944 Judgment makes clear, the United States, while enjoying the benefit of any accretions, also bears the burden of any lands it loses through reliction (i.e., erosion). *Hartigan*, 448 Mass. at 407; *see also County of St. Clair v. Lovingston*, 90 U.S. (23 Wall) 46, 68-69 (1874).

[8] This point is reflected by maps of the area that predate the 1944 Judgment and show, for example, an area identified as "Common Flat[s]" extending out close to a precursor line to the one on the map appended to the 1944 Judgment. Ex. 3 (1938 Map of the proposed Monomoy Island Migratory Waterfowl Refuge).

mean low water line. *See Lorusso v. Acapesket Improvement Ass'n*, 408 Mass. 772, 781-782 (1990); *see also Hartigan*, 464 Mass. at 407.[9] Third, and relatedly, the Commonwealth and nearby municipalities, would also likely have wanted to prevent the possibility of the land-based Refuge migrating west, and, by proximity, or actual attachment, impacting existing and future uses on the Commonwealth's landside shoreline.

Even if the language in the 1944 Judgment were not so clear and therefore determinative, the FWS's claim is also inconsistent with the 1996 Supplemental Decree in *United States v. Maine*, U.S. Supreme Ct. Original A. No. 35 (*Massachusetts Boundary Case*) and the prior finding of the United States District Court for the District of Massachusetts in *United States v. Taylor*, Crim. A. No. 79-319-MC (D. Mass. 1979). While, as the FWS asserts, CCP/EIS at 2-101, the *Maine* Court did hold that Nantucket Sound was not part of Commonwealth's historic inland waters, *United States v. Maine*, 475 U.S. 89, 90, 97-105 (1986), the United States had already *conceded* that the bay formed on Monomoy's western side by a line drawn between Monomoy Point and Point Gammon did. Ex. 4, at ¶ 3.b. (Stipulation in Lieu of Amended Pleadings); *see also* Ex. 5 (map showing agreed to limits of inland waters and territorial seas). And that concession was incorporated into the *Maine* Court's 1996 Supplemental Decree. Ex. 6, at ¶ 2(d).[10] In other words, contrary to FWS's claim, *see* CCP/EIS at 2-101, title to the submerged lands within the bay to the west of Monomoy has forever been in the Commonwealth, and the only way the United States could have acquired those lands is if it had taken them in 1944, which, as discussed above, it clearly did not do.[11] Prior to the CCP/EIS, the

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[9] As stated in *Lorusso*, "when a parcel of land erodes on one side and forms accretions on another, and the process continues until the original parcel ceases to exist[,]" "the lot owner's proprietary interest in the accreted land mass dissolves." 408 Mass. at 781-782.

[10] Notably, the Stipulation, the Joint Motion for Entry of A Supplemental Decree, and the Supplemental Decree do not except from their scope any submerged lands in the vicinity of Monomoy's western shoreline. Exs. 4 (Stipulation), 6 (Supplemental Decree), 7 (Joint Motion).

[11] Since title to the submerged lands to the west of Monomoy was *not* already in the United States at the time of the taking, they also could not have been excepted from section 1311 of the Submerged Land Act, as the FWS suggests. 43 U.S.C. §§ 1311, 1313 (2012); CCP/EIS at 2-101. Even if that were not the case, however, the United States also conceded in the *Massachusetts Boundary Case* that, at a minimum, the Massachusetts coastline was "the ordinary low water mark along the mainland from Cuttyhunk Island to *Monomoy Point* as well as around the various islands south of the two sounds." Ex. 8, at 4 & n.5 (Report of the Special Master (1984) (emphasis added)); *see also* Ex. 9 (Ltr. from Drew S. Days, III, Solicitor General, U.S. Dep't of Justice, to Francis J. Lorson, Deputy Clerk, Supreme Court of the United States, re *United States v. State of Maine* (*Massachusetts Boundary Case*), No. 35 Orig. (Feb. 9, 1996)). Remarkably, despite the resources dedicated to scouring the historical record regarding the Commonwealth's claimed historic title to all of Nantucket Sound and the specific references to Monomoy, nowhere did the United States even remotely suggest that it had acquired, or seek to reserve from the scope of the Court's Decree, the submerged lands lying within the coordinate-based rectangle on the map appended to the 1944 Judgment. Indeed, the FWS's assertion that the United States already held title to those lands and thus did not need to acquire them at the time of the taking would have been an incredibly risky basis on which to proceed in 1944. *See* CCP/EIS at 2-101.

resolution of this issue was apparently as straightforward as the plain language of the Judgment would make it seem. In *Taylor*, for example, the District Court found Mr. Taylor not guilty of willfully letting his dogs go unleashed on Refuge land because the 1978 incident occurred *below* the mean low water line, i.e., on the Commonwealth's submerged lands, not on federal land, and thus outside of the Refuge's boundary. Ex. 11, at 2 (Finding).[12] Taken together, these authorities clearly countermand the FWS's claim.

The 1944 Declaration of Taking Did Not
Eliminate Permanently Public Trust Rights

In a section of the CCP/EIS labeled as "Issues Outside the Scope of this Analysis or Not Completely Within the Jurisdiction of the Service," the FWS claims that the public rights embodied by the public trust doctrine and the Colonial Ordinances of 1641-47 "were eliminated as a result of the condemnation establishing the refuge." CCP/EIS at 1-42. The Commonwealth requests that the FWS omit the text concerning the public trust doctrine and the Colonial Ordinances from the final CCP/EIS both because, as the label suggests, it is beyond the scope of the analysis and therefore a subject on which the FWS need not opine and because it is inconsistent with settled law, as described below. Alternatively, the Commonwealth requests that the FWS revise the text to reflect the analysis set forth below.

Binding precedent in the District of Massachusetts makes clear that the 1944 Judgment did not permanently eliminate the public's rights protected by the public trust doctrine and the Colonial Ordinances of 1641-47 in the condemned land. The "public trust doctrine," which finds its roots in Roman and English law, denotes the "government's long-standing and firmly established obligation [as trustee] to protect the public's interest in," and use of, tidelands and tidewaters. *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, 457 Mass. 663, 676 (2010) (citations omitted); *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53, 90-91 (1851).[13] Contrary to the FWS's claim, when the federal government takes land subject to the

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At that time, the Commonwealth had already asserted its claim to title to the submerged lands within one marine league (three nautical miles) of the Commonwealth's shoreline at low water, *see* Ex. 10 (1859 Mass. Acts 640 ch. 289), and the U.S. Supreme Court had not yet rejected the coastal States' claims that they held (and had never ceded) title to submerged lands within the marginal sea (i.e., the three mile belt). *United States v. Maine*, 420 U.S. 515, 517-28 (1975) (discussing, *inter alia*, *United States v. California*, 332 U.S. 19 (1947), and affirming that *California's* holding applied to the original thirteen Colonies).

[12] *See also Assocs. of Cape Cod, Inc. v. Babbitt*, C.A. No. 00-10549-RMZ, at 12 (D. Mass. May 22, 2001) (stating that the limit of the Refuge's Wilderness Area is the mean low water line) (attached as Ex. 12).

[13] As regards submerged lands, the Commonwealth holds both title (the *jus privatum*) and the obligation to promote and protect the public's rights of access to, and use of, tidelands and tidewaters (the *jus publicum*) from the historic mean low water line to the seaward limit of the Commonwealth's jurisdiction. *Arno*, 457 Mass. at 454-55. And, as regards tidal flats, following the codification of the Colonial Ordinances of 1641-47, private littoral owners gained conditional

public trust doctrine, it takes title to those lands subject to the same public trust responsibilities as the Commonwealth. *United States v. 1.58 Acres of Land Situated in the City of Boston*, 523 F. Supp. 120, 125 (D. Mass. 1981).[14] That case, *1.58 Acres of Land*, is instructive as it *rejected* the United States' claim that the U.S. Coast Guard's condemnation of land bordering on Boston Harbor could eliminate the public trust rights (i.e., the *jus publicum*) in those lands. *Id.* at 121-22, 124-25.[15] Thus, here, as in *1.58 Acres of Land*, the lands that the United States took between the mean high water and low water lines[16] remain subject to the public trust doctrine.[17]

Even if the case law were not so clear on the issue, the 1944 Judgment also did not express a clear intention to eliminate the public trust rights from the lands being taken. Instead, the Judgment states only that "the fee simple title to said lands together with all accretion and reliction and all and singular the water rights, riparian rights and other rights . . . thereunto belonging or in any wise appertaining, vested in the United States upon the filing of the said

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tittle to those lands, but the Commonwealth retained the *jus publicum* and the right to determine their use. *See id.* at 436, 454-55, 457.

[14] While the District Court in *1.58 Acres of Land Situated in the City of Boston* spoke specifically to the preservation of the public trust on submerged lands, *see* 523 F. Supp. at 122, it is now well settled that the public trust doctrine applies with equal force to tidal flats, such as those taken by the United States in the 1944 Judgment. *Arno*, 457 Mass. at 450, 452, 455.

[15] *Accord United States v. 32.42 Acres of Land, More or Less Located in San Diego County*, C.A. No. 05-cv-1137, at 11 (S.D. Cal. Apr. 28, 2006) (Ex. 13) (holding that when unfilled tidelands are condemned by the United States, "the United States acquires . . . [those tidelands] subject to the public trust, and it may not later convey . . . [them] to a private party." (citing *City of Alameda v. Todd Shipyards Corp.*, 635 F. Supp. 1447, 1450 (N.D. Cal. 1986)), *acq. in result*, 683 F.3d 1030, 1032-33 (9th Cir. 2012). The District Court's decision in *Associates of Cape Cod* is not to the contrary, as it held that the public trust doctrine (and the Colonial Ordinances) did not impede the federal defendants' regulatory, but it did not also address the effect of a federal taking on the *jus publicum* or purport to overrule *1.58 Acres of Land*—a published decision. *Assocs. of Cape Cod*, C.A. No. 00-10549-RMZ, at 12 (Ex. 12).

[16] If the judiciary were, however, to conclude that the scope of the 1944 Judgment did include submerged lands, then this rule would apply to them too.

[17] That does not mean, as the FWS seems to fear, that the agency must give the public unfettered use of Refuge lands between the mean low and mean high water lines. Instead, just like the Commonwealth, the FWS is entitled to, as the trustee of those public rights, to manage and regulate the lands in a manner that it deems necessary and appropriate to fulfill the public purposes of the Refuge. But, if the United States ever decides to sell those lands—something that may seem unimaginable today, but for which we must plan—it may not convey them into private hands free from the public trust rights pursuant to which it now holds them. A contrary conclusion would in fact be remarkable, because it would mean that the United States could sell the lands to a private party who may then be able to develop the lands for its sole and exclusive use, e.g., a private beach resort—something which is assuredly not desirable from either sovereign's perspective.

declaration of taking." Ex. 1, at 1. While this language is admittedly expansive nowhere does it express a clear intent to take or eliminate the public trust rights in the land taken by the 1944 Judgment. *See id.* Under Massachusetts law, public trust rights cannot be eliminated, even in tidal flats—tidelands sitting between the mean high water line and the mean low water line—without, *inter alia*, a clearly expressed intention to do so (e.g., by stating expressly an intent to eliminate "public trust rights." *Arno*, 457 Mass. at 450, 452, 455.[18] Indeed, where the United States has attempted to take or eliminate public trust rights, it has "explicitly list[ed] 'any tidelands trust rights" of the affected State "as part of the estate to be taken" because of this clear statement rule and the special, sovereign nature of the rights. *32.42 Acres of Land, More or Less Located in San Diego County*, 683 F.3d at 1033. Here, as noted above, the 1944 Judgment did not include that required clear statement.

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For the foregoing reasons, the Commonwealth respectfully requests that the FWS's Final CCP/EIS reflect the facts and the law set forth in this letter.

Sincerely,

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Exhibits:

(1) Judgment on the Declaration of Taking, *United States v. 3,000 Acres of Land, More or Less*, Situated in Barnstable County, Commonwealth of Massachusetts, Misc. C.A. No. 6340 (D. Mass. June 1, 1944);

[18] For this reason, the 1944 Judgment's vague reference to "other rights" does not constitute a sufficient expression of the United States' intention to take or eliminate public trust rights in the lands taken.

(2) Declaration of Taking, *United States v. 3,000 Acres of Land, More or Less*, Situated in Barnstable County, Commonwealth of Massachusetts, Misc. C.A. No. 6340 (D. Mass. Feb. 10, 1944);

(3) U.S. Dep't of Agriculture, Bureau of Biological Survey, Division of Land Acquisition, Monomy Island Migratory Waterfowl Refuge, Barnstable County, Massachusetts (Sept. 15, 1938);

(4) Stipulation in Lieu of Amended Pleadings, *United States v. Maine*, U.S. Supreme Ct. Original A. No. 35 (*Massachusetts Boundary Case*) (Apr. 30, 1982);

(5) National Oceanic and Atmospheric Administration (NOAA), Chart 13237, Nantucket Sound and Approaches, showing the closing lines agreed to in the Stipulation in Lieu of Amended Pleadings in the event the Nantucket Sound is adjudged not to be inland waters (Appendix C to Report of the Special Master in *United States v. Maine*, U.S. Supreme Ct. Original A. No. 35 (*Massachusetts Boundary Case*) (1984);

(6) Supplemental Decree, *United States v. Maine*, U.S. Supreme Ct. Original A. No. 35 (*Massachusetts Boundary Case*) (1996);

(7) Joint Motion for Entry of A Supplemental Decree, Memorandum in Support of the Joint Motion, and Proposed Supplemental Decree, *United States v. Maine*, U.S. Supreme Ct. Original A. No. 35 (*Massachusetts Boundary Case*) (Jan. 31, 1996);

(8) Report of the Special Master, *United States v. Maine*, U.S. Supreme Ct. Original A. No. 35 (*Massachusetts Boundary Case*) (1984) (selected pages);

(9) Ltr. from Drew S. Days, III, Solicitor General, U.S. Dep't of Justice, to Francis J. Lorson, Deputy Clerk, Supreme Court of the United States, re United States v. State of Maine (Massachusetts Boundary Case), No. 35 Orig. (Feb. 9, 1996);

(10) An Act Declaring the Territorial Limits of the Commonwealth, and Establishing the Limits of Certain Counties, 1859 Mass. Acts 640 ch. 289;

(11) Finding, *United States v. Taylor*, Crim. A. No. 79-319-MC (D. Mass. Dec 18, 1979);

(12) *Assocs. of Cape Cod, Inc. v. Babbitt*, C.A. No. 00-10549-RMZ, at 12 (D. Mass. May 22, 2001); and

(13) *United States v. 32.42 Acres of Land, More or Less Located in San Diego County*, C.A. No. 05-cv-1137 (S.D. Cal. Apr. 28, 2006).